

1 would not have been found over here. Exactly, unbeknownst to
2 the investigators -- unbeknownst to Kenneth Barnes, they match.
3 Ken Barnes told you the truth about what happened back there.
4 And he was back there with her.

5 And where does he tell you he goes after the tower
6 site. He goes after the tower site, he leaves and goes, he
7 doesn't say we go right to Eat'n Park, he says they go to Media
8 Play. They walk into Media Play, and he's not exactly sure why
9 he's at Media Play. You ought to think about this for
10 yourself. She goes into Media Play, nothing. She looks at the
11 clock, let's go. She leaves. Marjorie Diehl-Armstrong is
12 attempting to alibi herself out by making it look like she's at
13 Media Play. But she knows where they're heading next. It's
14 time to go to the Eat'n Park and keep an eye on Brian Wells.
15 Where does Ken Barnes say they go. They go and they park right
16 there, they parked -- there was questions about this yesterday,
17 you heard the testimony and you saw the photographs. Eat'n
18 Park is elevated from Peach Street. The McDonald's is across
19 the street. The bank is back here. They're in the direct line
20 of sight of the location where the bank robbery occurs. What
21 does Ken Barnes tell you she does. She looks through
22 binoculars and actually watches. She was involved in this
23 crime, she was a lookout on that day. And she, along with Ken
24 Barnes, were associated.

25 But there are other things that we end up

1 corroborating with Ken Barnes' story. When Ken Barnes tells us
2 about this one gunshot. We go back into the evidence and the
3 witness statements and we find Melissa Shearer. All the way
4 back to 2003. She actually comes in and testified that she
5 heard one gunshot being fired on the afternoon of August 28,
6 2003.

7 So we go further, we look into the evidence. What
8 do we find. That Bill Rothstein turned over to the state
9 police on September 21 2003, his gun. Four live bullets, one
10 spent shell casing. Ken Barnes was back there with her. What
11 does he do after Barnes and Noble, excuse me, after Eat'n Park,
12 after the bank robbery happens and after the police converge
13 and they come in. They skip out from the back way, and where
14 do they go. Of all places, he tells you that they go to this
15 place Summit Auto, some used car dealership further south, and
16 what happens. They swap vehicles. What type of vehicle did
17 Mr. Rothstein have on that day. This gold, larger, older model
18 sedan, gold in color. And where is it today, 2010, never saw
19 it after that day. Just like the other evidence that they took
20 steps to get rid of on a regular basis.

21 In addition, Ken Barnes tells you that he was with
22 her at the meeting on August 27, 2003. What did you discover.
23 That on August 27, 2003, this man, Michael Douglas,
24 disconnected from this, he is a witness who just happens to be
25 driving down the road after working 80-hour weeks. What does

1 he see coming right out of that tower site, a day before the
2 collar bomb incident, he sees Brian Wells in a green Geo Metro
3 pull out.

4 What does that do for you. Ken Barnes didn't have
5 to come in and say anything about August 27, 2003. Who cares
6 about August 27, 2003. But what he tells you is that he's at
7 this meeting and she's there. And there is the device, whether
8 it's a live device or not, no one knows. But there's the
9 device. They're with Brian Wells, they're discussing the plans
10 for the next day. And Michael Douglas, he just unwittingly
11 shows up and here they come pulling out of the driveway on that
12 date.

13 I want to dispense with some ridiculous notions that
14 you heard yesterday. First, that somehow Ken Barnes, for some
15 reason Ken Barnes wanted to independently kill Harold Diehl, a
16 man he never knew and a man he never met. You saw her testify.
17 And, ladies and gentlemen, you saw the venom and the hatred that
18 she has for her father. You saw it. Interrupted in the
19 courtroom multiple times. Venom, hatred, calling that man a
20 racist, calling that man all sorts of names. The hatred from
21 her, you can't fake that. The hatred weld up here in this
22 courtroom. She hated that man, she wanted him dead.

23 She solicited Ken Barnes to kill him. Ken Barnes
24 isn't in the guy's will. Ken Barnes isn't in the blood line.
25 Ken Barnes doesn't have a supposed birthright to Harold Diehl's

1 money. He has no reason to independently to kill her father.
2 What is interesting is that never does the defendant deny in
3 her interviews with others or at the prison itself, she never
4 denies this notion of killing her father. She voluntarily
5 gives it up. But she tries to pin it on Ken Barnes, and that's
6 just a silly notion.

7 Ken Barnes had had discussions about killing this
8 woman's father. Ken Barnes knew the details about the inside
9 of that house. Ken Barnes knew how she wanted it to happen
10 because she solicited him. She gets fired up and it's over one
11 issue, ladies and gentlemen, money, money, greed, money. And
12 you know what, in 2003 she needed it.

13 This notion that she had 133 grand in her house that
14 got stolen. This notion that everything she had was the best.
15 That she was clothed with furs and houses and cars. She needed
16 money. This is what you learn. She was living as a relative
17 squalor. Her homes were dilapidated shacks covered with junk.
18 Cat urine, debris.

19 Her own lawyer said that he actually had to climb
20 over things of trash inside these houses to get where you were
21 going. Her house itself was worthless. The land on this
22 supposed beautiful lakefront property, after the house burned
23 down, the land was worth \$14,000, according to Larry
24 D'Ambrosio. Her place in New York, this great place, she said
25 oh, yesterday it was good stuff. No, it wasn't. It was \$400

1 worth of scrap metal from the trailers what were there. Her
2 East 7th Street place was a mess. It was slipshod. Barnes and
3 Roden did a terrible job putting that second apartment in. She
4 didn't get robbed of \$133,000, it was \$2,300. \$133,000, that's
5 this woman's grandiose notion that she somehow is this wealthy
6 woman. And her father, he had money and she wanted it. She
7 wanted him dead to get it because she needed it. She needed
8 it. Where was she getting food. She already talked about it.
9 These guys were going to the food bank.

10 What was the nature of the East 7th Street house.
11 This is a subsidized housing unit. That they actually have to
12 take steps to renovate so she doesn't lose their government
13 subsidy with regard to the way in which she and Roden are
14 living there. She wanted her father dead, and that became
15 clear on the witness stand.

16 Let's all dispense with this notion that James
17 Roden's murder, the double shotgun blast murder of James Roden,
18 is somehow, as of yesterday, connected or caused by this \$2,000
19 robbery. Come on. She murdered this man because these other
20 people, Ted Ballew she said. If she knew Ted Ballew stole
21 \$2,300 and that's what she was angry about, why didn't she kill
22 Ted Ballew. Why didn't she kill Ted Ballew. She knows he did
23 it. There is no connection between the reason for this murder
24 and that robbery.

25 Ladies and gentlemen, there is a much greater reason

1 for her murder of James Roden. It's because she is in on this
2 plot. She wants her father dead. She's involved in this bank
3 robbery plan and she snaps. Just like Kelly Makela has told
4 you, just like is located in the notes. James Roden was not
5 going to be in on this thing as the getaway driver. James
6 Roden was going to go tell someone about it and she flipped,
7 she flipped, and shot him twice in the chest. Not over \$2,300.
8 But just as she admitted to inmates and she admitted to these
9 investigators, she murdered him because of him going to the
10 authorities or telling someone about the collar bomb plot.

11 Ladies and gentlemen, this ludicrous, over thought,
12 overworked, desperately failed plan to rob the bank was hatched
13 on the heels of her greed. She wanted her father killed. She
14 wanted the money. Rothstein needed money as well. And I just
15 want to tell you on the side that this concept of motive, it
16 has kind of an interesting connotation in this courtroom. The
17 United States is not required to prove someone's motive at all.
18 You will be instructed that motive is not an element of the
19 offense. You have been provided some evidence of what
20 motivated these people. But I caution you in that regard.
21 Don't get yourself all mixed up in what motivated these people.
22 Because what that does to you, when we go back to reality, that
23 causes you to go back there and deliberate and consider as if
24 you could possibly, reasonably consider what would actually
25 motivate these people to engage in this maniacal plan. You'll

1 get yourself all twisted up, not try to come up with some real,
2 legitimate reasonable understandable reason for these people,
3 not only planning to rob the bank, but strapping this device on
4 another human being, and killing Jim Roden. And then not only
5 doing those things, but taking steps to freeze his dead body
6 and take steps to hack him up.

7 Listen to the instruction on motive. And if there's
8 a motive in this case, the motive is greed. The solicitation
9 to kill her father is an overt act in furtherance of this
10 conspiracy. The solicitation of Ken Barnes to engage in the
11 bank robbery, is an overt act in this conspiracy. Whether you
12 think that was the only reason for these people getting
13 involved or not, that has to do with motive. They were
14 motivated by greed, it was about the money.

15 In addition, this notion over the last couple days
16 that she's a lone wolf. I'm a paranoid lone wolf, I wouldn't
17 become involved in a conspiracy. Is that consistent with what
18 you know briefly over the last couple weeks about this woman.
19 No. No. She is grandiose of herself, she is narcissistic.
20 She certainly is mistrusting of others, but she turned to them
21 when she needed to do so.

22 A couple of examples. This whole thing at 1867 East
23 7th Street. When they actually realized that it was unlawful
24 for them to be living there together in a single-family home
25 and getting government subsidies and they had to actually

1 renovate the second floor, she didn't lone wolf it, what did
2 she do. They came up with a plan. This is not necessarily a
3 serious criminal plot, but I'm telling you this is because she
4 is not a lone wolf as she would like you to believe yesterday.
5 She comes up with a plan. She enlists the help of James Roden.
6 She then calls on Kenny, her Kenny, Kenny Barnes. They then
7 figure out what they're going to do with the second floor,
8 they're going to renovate it and put in a bathroom. And
9 they're going to separate those things so that they can
10 continue to get this money from the government. And then they
11 go further and they plan. They go out and shop and they
12 purchase the items. They go down the path of actually working
13 together.

14 But that's not all. In the context of Jim Roden's
15 death, she didn't lone wolf it. First of all, it was connected
16 with the collar bomb case. But even on her notion that she
17 killed him for \$2,300, she didn't lone wolf it. As soon as she
18 shotgun blasted him twice in the chest, who did she call on.
19 She told you at the time, she only had a few people in her
20 life. Jim -- Jim was dead. She had Jim, Kenny Barnes, Aggie
21 and William Rothstein. Who did she turn to when James Roden
22 was dead. Did she do it on her own, no. She turned to William
23 Rothstein, her friend of 30 years, this man who supposedly
24 loved her, she turned to him. Then they engaged in an entire
25 scheme, what are they going to do to remove the body. What

1 steps are we going to take to remove evidence. She might try
2 and pin all that evidence removal on Rothstein and I didn't
3 have anything to do with it. But yes, she did. You heard
4 Rothstein indicate that she called the Pennsylvania State
5 Police with regard to how to destroy the blood evidence.

6 But that's not all you heard. Corporal Pottorf
7 testified in the context of his investigation back then, it
8 just seemed strange to him, that a woman, just like Rothstein
9 said, a woman, this woman in particular, he didn't know who it
10 was at the time, Corporal Pottorf. But you know from the
11 circumstantial evidence in this case, that it had to be her.
12 What does she do. She calls the state police to learn about
13 evidence removal. She asks about the chemicals, the things and
14 supplies and lighting sources that would be necessary to remove
15 blood evidence. They concocted the plan. She didn't lone wolf
16 it, she was perfectly capable of engaging in a conspiracy and
17 she did so.

18 The plan went further. They weren't going to just
19 gather the evidence and get it out of the house. They were
20 going to take it to Rothstein's, buy a freezer, buy an ice
21 chopper, consider a meat grinder. They then took the evidence
22 and threw it all over Erie County and elsewhere. They broke
23 the shotgun up into small minute pieces, and they were planning
24 on getting rid of the body.

25 But that's not all. They also concocted a story of

1 what they were going to tell the police if they got caught.
2 This is what schemers and co-conspirators do. And she is
3 perfectly capable, as the evidence proves, of doing those
4 things. This paranoid lone wolf's plan is not supported by the
5 evidence. But the collar bomb case and the death of James
6 Roden are connected.

7 And that brings me to the interviews of these
8 agents. You can judge the character of Special Agent Clark and
9 Special Agent Wick. Judge them. How did they testify. How
10 did they appear. How were their recollections of the
11 information. You know with them, what steps did they take to
12 make sure it was documented what they were told back in 2005,
13 2006 and 2007. Did they come in like Larry D'Ambrosio. Many
14 years removed, with a motive to make money off this case,
15 without a stitch of notes. Never a note from a meeting with
16 his client. Never a letter concerning the content of those
17 meetings. Never a report about anything. Compare that to
18 these agents. And then look at the details of how she talked
19 with them. Listen by the time they went to get Marjorie
20 Diehl-Armstrong in 2005, she knew, she knew that people were on
21 to her then. She knew that Kelly Makela had gone to the
22 authorities. She knew and was worried that inmates were
23 talking on her. She knew that Ken Barnes was likely talking to
24 investigators. She knew that co-conspirators, who she was
25 worried about, were coming forward.

1 She tries to get on top of it and she reaches out to
2 Corporal Gluth. And they come. And she knew, what's really
3 interesting, she tried to do what Ken Barnes had already done.
4 She tried to dime out Rothstein, just like Ken Barnes initially
5 told you that he explained her soliciting to do the bank
6 robbery in the death of her father. Just like Barnes, this is
7 how it happens, ladies and gentlemen.

8 In the context of her attempting to dime out
9 Rothstein, what does she do. She ends up necessarily
10 implicating herself. Look at these initial meetings. What is
11 it that she's worried to talk about. She is worried to talk
12 about two things. The contents of what she knows is in device,
13 and why the reason she killed James Roden.

14 She was an aider and abetter as charged in the
15 indictment in this case. And all the government needs to prove
16 is that she was involved in some way as a lookout. But she
17 told you a whole lot more in the way in which she talked to
18 these investigators.

19 These timers, there was a lot of bantering back and
20 forth about timers. But there are three timers in this device.
21 Not just two, three. Two of a different nature. There's an
22 electronic countdown timer. There are two kitchen windup egg
23 timers. Larry D'Ambrosio was wrong, he was never told that
24 there were kitchen egg timers. He was told, just like he wrote
25 to Marjorie Diehl-Armstrong, about a timing device or about a

1 timing device without any description.

2 And you know why. These agents would never, it
3 would not have served their investigative purposes, to disclose
4 the nature and content of the device. They had kept that
5 secret. When they met with her in 2005, she knew that she had
6 screwed up. After avoiding talking about the issue. She knew
7 when she actually told these investigators about timers, that
8 she had hung herself.

9 And what is interesting is if you look at the
10 inmates who talked with her. Melissa Kump, in particular.
11 Melissa Kump, whose father was believed by this woman to be a
12 master criminal mind. Marjorie Diehl-Armstrong, after
13 admitting to these agents about giving timers, had to turn to
14 someone to help her get out of this. Why. Because it was
15 incriminating. Because she knew she had said it. Not only did
16 she tell the agents, but she admitted to inmates, who would
17 only know that this woman was having conversation with the
18 agents if this woman told her. The only way.

19 So she was looking for ways to change her story.
20 She wanted to focus the investigators on Rothstein. She wanted
21 to make it appear that her role was the least serious. She had
22 failed to disclose to her attorney the full extent to which she
23 was involved and that's the context of these interviews.

24 When Larry D'Ambrosio comes in and comes into these
25 interviews, he thinks he has some bogus information about

1 Rothstein, he gives it. He thinks his client might have some
2 information, but she's not involved, and he sits there, she
3 fails to disclose to him the details. What does she say in
4 that meeting when they first come in. What is her concern and
5 you wonder why. It's very simple. Her first concern is I'm
6 worried about whether I need immunity. Immunity from what. If
7 she's not involved, immunity from what. Because she just
8 doesn't say I want immunity. She says I'm worried about
9 incriminating myself. I'm worried about giving them
10 information about my knowledge and assistance to others. And
11 she is concerned that she might end up being charged as an
12 accomplice.

13 That's what her worry is. She's only worried about
14 that if she had more involvement than just knowing about
15 Rothstein. Because if she was just diming out Rothstein, why
16 was she worried. What was she worried she was going to
17 screwing herself over with, how was she worried she was going
18 to hang herself. That's how the meeting started. And
19 specifically what did she say. I'm worried that I will hang
20 myself, if I explain to you the reason why I murdered Jim
21 Roden. There's only one reason for her to be worried about
22 that. Because it was connected.

23 She even said the reason for Roden's death would
24 implicate me in the Wells plot and I'm worried. But just like
25 Ken Barnes, the diming out of Rothstein wasn't working. And

1 she came to the point where she needed to come clean on her own
2 involvement and just like Barnes, she did. That may seem
3 incredible from the standpoint of why would she dime herself
4 out. She did the exact same thing Ken Barnes did. She knew
5 these people were coming at her, she wanted to get in front of
6 it and she disclosed it. She said the reason for Roden's death
7 was the collar bomb plot.

8 Then she turned to the timing devices. Tell us
9 about timers. She turns to her attorney and says can I tell
10 them. He says yes. His own client had been lying to him about
11 her involvement. He says yes. And she says, which no one
12 knew, she says I gave him two kitchen egg timers, relatively
13 new. And she describes them, ladies and gentlemen. You heard
14 about this so much over the last couple of weeks you're
15 probably sick of it. Back in time she described them, they
16 were not known publicly. She described what it was she gave to
17 this man. More importantly, she knew that she gave these
18 things to this man for purposes of the collar bomb device
19 because, otherwise, why would she be worried that the
20 information would hang her. Why would she need immunity about
21 giving those things. She knew, not only that she gave those
22 devices, but why.

23 Then what does she do. She starts making ridiculous
24 claims. Like, she didn't really know if Ken Barnes was with
25 her. Maybe Ken Barnes -- maybe Ken Barnes, because of her

1 eyesight was so poor, was sitting right next to her but she
2 couldn't identify him. She changed her story here in court.
3 But she told the investigators that oh, no I get it, I was at
4 these locations. But I was at these locations, I'm not sure it
5 was Ken Barnes because of my eyesight. But I was at these
6 locations because Bill Rothstein wanted to frame me. I was at
7 these locations because he wanted to have sex with me. I was
8 at these locations because Bill Rothstein knew he had cancer
9 and as a result of knowing he had cancer, he was going to die,
10 and somehow if he implicated her in the collar bomb case, if he
11 couldn't have her, nobody would. That's just stupid.
12 Completely preposterous. That's what she said.

13 And it's preposterous, ladies and gentlemen, that's
14 her claim to investigators. She was scrambling for some story.
15 Because she knew she was at these sites and she ended up lying
16 to the investigators about it. It didn't make any sense
17 because Rothstein didn't need any more information to get
18 Marjorie Diehl-Armstrong in trouble. She had already murdered
19 James Roden and he had the freezer filled with James Roden's
20 body. He didn't need any other criminal activity to have her
21 put away.

22 But did he have her put away initially with regard
23 to this case. No. He's interviewed by Special Agent Clark,
24 and what does Bill Rothstein say. He doesn't say Marjorie
25 Diehl is in on this thing. Thinking back in time, I want her

1 to go away for the rest of her life. So if I can't have her,
2 nobody else could. Rothstein doesn't say that.

3 What does he say. He says I was with Marjorie
4 Diehl-Armstrong on August 28, 2003. I was with her all day
5 long, we were driving out in North East. Guess what. He
6 didn't try to dime her out initially. He tried to alibi her
7 with regard to this case. Because he didn't want the pressure
8 on himself as well. They turned to her and they say listen,
9 Rothstein says he was with you that day. And she says no, he
10 wasn't. He was giving her an alibi and she didn't take it.
11 Because they were so twisted, dysfunctional. He had already
12 dimed her out with regard to Roden's murder. So twisted and
13 dysfunctional, that they didn't know which way to point the
14 finger when this thing became uncovered.

15 At trial she came up with yet another ludicrous
16 claim. Listen to this, this is what she testified to
17 yesterday. Now having told investigators, first of all, that
18 she killed Roden because of the collar bomb case, all the
19 things that she had told the inmates, all the things that
20 incriminated her, coming up with this story that I was at
21 these places because Rothstein made her.

22 What did she come up with yesterday. I wasn't
23 involved in this thing. But I did go to the Shell station.
24 Michael Vogt was right, I was at the Shell station. And
25 Rothstein comes over to her, as she testified yesterday, and

1 says, Marge, calm down. There's a man that I know you don't
2 like and he's right over there, and it's Kenny Barnes. I'm
3 going to have him come over now, but I want you to calm down.
4 Doesn't make any sense. But it goes further, that's not all
5 she says. She says I was feeling kind of hungry. And also
6 Rothstein went to the pay phone and he had this private
7 conversation. He disclosed to me that he ordered a couple of
8 pizzas and I thought well, I could have a piece of pizza. And
9 she testifies yesterday that the way this really happened is
10 Rothstein says nope, that's for the guys.

11 She testified yesterday, sitting right there on this
12 witness stand, that she then drove over to KFC, got a value
13 meal, sat there and ate chicken, sat there the entire day.
14 That's the story you're left to believe. Consider it. It's
15 ludicrous, it's preposterous. It's a fabricated claim to get
16 over the admission that she made to these investigators. Don't
17 go in to deliberate and come up with yet another version on her
18 behalf -- you're not obligated to do that.

19 What you're left with is all the evidence from these
20 witnesses explaining to you her admissions concerning her
21 involvement in this case. You compare that to what she said on
22 the witness stand. Marge, I got this guy over there you don't
23 really like, but I'm going to call him over. You can't have
24 pizza because it's for the guys. That's what she said under
25 oath in front of you. The only thing with which you can

1 compare it is the evidence about her involvement and her
2 claims. Don't go in there and try to make something up for her
3 because she's trying to gain sympathy from you in some fashion.
4 Sympathy has no place in your deliberations.

5 Then the ride-along. Just like Ken Barnes testified
6 to. When they do this ride-along, they're not leading her in
7 any way, they have no reason to lead her, it doesn't make
8 sense. Why would they do that. And then at the time we're
9 going to lead her, but we're actually going to invite her
10 lawyer along with us and we're going to take notes of it. And
11 somehow in the course of that, we're going to contrive this
12 scheme. Not only contrive this scheme, but we're going to, for
13 a 2010 murder trial, we're going to go find some inmates who
14 might be able to come together and provide information that is
15 consistent.

16 And we're going to look for some notes that might be
17 in evidence at EPD. And we're going to get into those notes
18 and we're going to change them, we're going to make them seem
19 consistent with her story. And we're going to go find Michael
20 Vogt and Michael Douglas and Thomas Bolan and Thomas Sedwick
21 and Charles Brandt. We're going to find Lynn Cedenno Ennis at
22 the Erie County Jail. We're going to find Ickiewicz and
23 Rupcewski. We're going to get all those guys together and make
24 sure that what we do on this ride-along is going to be
25 corroborated by what they tell us in this case. That didn't

1 happen. It might have set her off on the witness stand
2 yesterday, but it didn't happen.

3 What happened on this ride-along is they got in the
4 car, they said, Marge, take us to place number one. She goes
5 to Barnes and Noble, just like Ken Barnes, just like he
6 testified. She goes to the Shell gas station. She goes to
7 Summit Auto. She goes towards the tower site. Didn't go all
8 the way back. She at some point in time told the investigators
9 well, I saw Brian Wells, Bill Rothstein, Ken Barnes going back
10 there and I heard a sound, but I think it was a backfire. She
11 didn't go all the way back there on the drive-along because she
12 needed to hold something back.

13 Where did she go after the tower site. She takes
14 the investigators to Media Play. Ken Barnes testified Media
15 Play just seemed so disconnected, we briefly go in and come
16 out. But she takes the agents to Media Play. Very quickly
17 there, and then where, to Eat'n Park. And where does she park.
18 In almost the exact spot that Ken Barnes parked several days
19 earlier. Where Ken Barnes said they looked through binoculars.
20 Where she admits to the inmates that she sat in the parking lot
21 and, ladies and gentlemen, as an aider and abetter, acted as a
22 lookout during the course of this particular case. She looked
23 through the binoculars. She drove away. When they saw Brian
24 Wells, her co-conspirator, who was going to die, caught by the
25 state police, they got the heck out of there.

1 Where does she take the investigators, to Summit
2 Auto, just like Ken Barnes testified to. What happens at
3 Summit Auto. They swap vehicles. And she even says we may
4 have swapped vehicles. And into what vehicle. The gold, older
5 model sedan.

6 And then what do you find out on Interstate 79. We
7 find out that a gold, older model vehicle, around the time
8 after the collar bomb case, is actually doing this U-turn and
9 observed by Tom Bolan. She admitted having done that.

10 And then where does she say after Summit Auto, might
11 have swapped vehicles. I might have gone to 79. The agents
12 drive to 79 and they stop their vehicle. And this is where it
13 all stops, because she turns and says it looks familiar, but I
14 can't tell you anymore until I get immunity. Come on.

15 This woman was involved in this plot. She was
16 involved in it up to her eyeballs. The things that she told
17 other people over the years prove her guilty beyond a
18 reasonable doubt.

19 These meetings that the agents had, they took
20 detailed notes. There were only a couple people in those
21 meetings. Special Agent Clark, Special Agent Wick, this woman
22 and her lawyer, Lawrence D'Ambrosio. You know they wanted to
23 make something of the fact that Kelly Makela hopes to write a
24 book. And I don't know about her writing style, how good she
25 is at it, but this is a story that she thinks is worth writing.

1 Does she have a contract with anybody. Any money that she's
2 likely going to make from this book that she's probably writing
3 on pen and paper. There is no evidence of that.

4 But, on the other hand, ladies and gentlemen, Larry
5 D'Ambrosio, not through cross-examination, you find out 20 days
6 maybe after the indictment in this case, he signs a contract
7 for the rights of the Marjorie Diehl-Armstrong story. He made
8 a claim, he thinks his understanding is, he claims is that the
9 contract is if she's convicted, he serves to gain. But you saw
10 the Erie Times newspaper article that Larry D'Ambrosio was
11 aware of before coming into this courtroom, and it says very
12 clearly a quote from Larry Garrison, if this woman is
13 convicted, nobody is getting any money. And Larry D'Ambrosio
14 in particular. He has everything to gain by coming into this
15 courtroom and doing what he can to have his client acquitted.
16 Because if she's acquitted, the contract is good, Larry
17 Garrison will pay out money.

18 There's going to be a lengthy description by the
19 judge concerning the law as it applies and your head is going
20 to be spinning. I'm just going to very quickly try to narrow
21 down some of the important things, from the standpoint of the
22 United States, to see where you can feel comfortable with those
23 instructions and apply them to the facts of this case.

24 First of all, with regard to the conspiracy charge,
25 three counts. Conspiracy, armed bank robbery when death

1 results. Possession and use of a destructive device in
2 furtherance of a crime of violence. Conspiracy. Put away your
3 own preconceived idea of what a conspiracy is. If you thought
4 a conspiracy required long, in-depth planning, written
5 contracts, anything like that, put it out of your mind.

6 A conspiracy is nothing more than a mutual
7 understanding or agreement, either spoken or unspoken. The
8 government does not have to prove the existence of a formal or
9 written agreement. Or an expressed oral agreement spelling out
10 the details of the understanding. The government does not have
11 to prove that all the members of the conspiracy directly met or
12 discussed between themselves their unlawful objectives. The
13 government is not even required to prove that all the people
14 named in the indictment were in fact parties to the agreement.

15 What we need to prove to you, ladies and gentlemen,
16 is that these participants, these individuals, by their concert
17 of action, their acting together, disclosed to you beyond a
18 reasonable doubt, their participation in a simple agreement.
19 And that agreement is to engage in a crime, here the crime is
20 bank robbery. Is there an agreement by the participants, and
21 she is one of them. I would submit to you on behalf of the
22 United States that the proof is beyond a reasonable doubt that
23 she is.

24 But then you also have to find an overt act in
25 furtherance of the conspiracy. There are 20 overt acts alleged

1 in the indictment. You must find that any one of the
2 participants engaged in one overt act in the course of the
3 conspiracy. That is all that is required. There are 20, you
4 don't need to find any more than one.

5 And those overt acts include that Brian Wells
6 entered the bank on August 28, 2003. The overt acts include
7 the planning meetings where these individuals met, as
8 identified in the indictment, and discussed the bank robbery.
9 The overt acts include this woman's murder of James Roden as
10 part of the plot because he was going to disclose it. The
11 overt acts include several of the things that are specifically
12 related to the evidence as presented to you. The judge is
13 going to go through all 20 of them. But all you need to do,
14 when you're listening to those 20 overt acts, all you need to
15 do is find that any one member of the conspiracy, engaged in
16 any one overt act. If you unanimously find that overt act and
17 her involvement in the agreement, that's sufficient for
18 conspiracy.

19 With regard to her being an aider and abetter in the
20 bank robbery. Although you may believe the evidence indicates
21 that she is a principal by her active, direct participation,
22 she's only charged as an aider and abetter. And all you need,
23 listen to the judge's instructions, to find that she, in some
24 way, participated in the offenses committed by all the
25 co-conspirators and that she wished to bring about that crime

1 to succeed. Did she in some way participate and wish that the
2 bank robbery would succeed. That's an aider and abetter.

3 There's an additional concept in the law of
4 conspiracy. And the judge is going to instruct you that each
5 member of the conspiracy is responsible for the crimes and
6 other acts committed by other members, as long as those crimes
7 and acts were committed to help further the objectives, and
8 were a natural consequence of the agreement. What that means
9 is that, you know already Marjorie Diehl-Armstrong didn't walk
10 into PNC Bank, Brian Wells did. Marjorie Diehl-Armstrong,
11 there's no evidence here that she actually constructed the
12 destructive device. It doesn't matter. The conspiracy
13 liability theory that Judge McLaughlin will explain to you
14 indicates that the conspirators are liable for the crimes
15 committed by their co-conspirators. The use of a destructive
16 device to kill Brian Wells and the bank robbery that Brian
17 Wells committed, committed either directly by virtue of his
18 complicity, after having been forced by these other individuals
19 at the last minute, any of the acts of the co-conspirators are
20 the responsibility of Marjorie Diehl-Armstrong if you believe
21 she's a member. And the only question for you is whether or
22 not those crimes were reasonably foreseeable as part of the
23 conspiracy.

24 Ladies and gentlemen, if you have any concern about
25 the conspirator's knowledge of this destructive device on

1 August 28, 2003, there's only one reason to have to shoot a gun
2 and force Brian Wells to wear this device and every one back
3 there, including her, knew it. This thing was live. This
4 thing was a ticking time bomb, every one knew it, no one
5 stopped it. The explosion death of Brian Wells, the bank
6 robbery that occurred, were reasonably foreseeable to all
7 members of this conspiracy.

8 This woman seated over here that you listened to
9 over the last couple days. She admitted her involvement in
10 this crime to Agents Clark, Wick and Gluth. She made
11 corroborating, incriminating statements to Kelly Makela, Gloria
12 Bishop, Lisa Kastle, Brooke Yacobozzi, Melissa Parker Kump and
13 Jennifer Brininger. She was incriminated by her erratic
14 driving on I-79 on August 28, 2003. She solicited Ken Barnes.
15 She acted as a lookout. Gave items that are in the device to
16 Mr. Rothstein. Fit Brian Wells's neck for the device.
17 Participated in it being placed on him. And murdered James
18 Roden. Double shotgun blast to the chest, not for \$2,300, but
19 in order to keep him from disclosing this maniacal plot.

20 The evidence proves her guilt, either directly or by
21 an aider and abetter. And, ladies and gentlemen, on behalf of
22 the United States of America, I ask that you return a verdict
23 of guilty to conspiracy to commit armed bank robbery, armed
24 bank robbery where the death of Brian Wells resulted, and the
25 use of a destructive device in furtherance of a crime of

1 violence. Thank you.

2 THE COURT: Members of the jury, we're going to take
3 our lunch recess at this time. We will be in recess until
4 1:30, at that time we will hear from Mr. Sughrue. We're in
5 recess.

6 (Whereupon, the Luncheon recess was taken from
7 12:25 p.m.; until 1:35 p.m.)

8 THE COURT: Good afternoon, ladies and gentlemen.
9 Mr. Sughrue.

10 MR. SUGHRUE: Thank you, your Honor. May it please
11 the court, Ms. Diehl-Armstrong, ladies and gentlemen of the
12 jury. Well, at the beginning of this I told you that I thought
13 this was simple and maybe you still think that, I'm not sure.

14 But remember, we agree that PNC Bank was a federally
15 insured financial institution. We agree that it was robbed.
16 We agree that Brian Wells went inside and robbed it. We agree
17 that he had an explosive device collar around his neck. We
18 agree that when he was in state police custody, he died when
19 that explosive device went off. That should narrow the focus
20 somewhat.

21 The real issue really becomes whether Marjorie was a
22 member of a conspiracy. Because it would appear that it took
23 multiple people to pull this off. At a minimum, Brian Wells
24 and William Rothstein agreeing to rob the bank.

25 So I want to read to you a little part of the law

1 that Judge McLaughlin is going to read to you later. If mine
2 differs a little bit from his, please defer to the judge's
3 reading. You may consider both direct evidence and
4 circumstantial evidence in deciding whether Marjorie joined the
5 conspiracy, knew of its criminal objective, and intended to
6 further the objective. Evidence which shows that Marjorie only
7 knew about the conspiracy, or only kept bad company by
8 associating with members of the conspiracy, or was only present
9 when it was discussed or when a crime was committed, is not
10 sufficient to prove that Marjorie was a member of the
11 conspiracy, even if Marjorie approved of what was happening or
12 did not object to it. Likewise, evidence showing that Marjorie
13 may have done something that happened to help the conspiracy,
14 does not necessarily prove that she joined the conspiracy.

15 Now, the judge will read to you the law a lot more
16 fully after Mr. Piccinini talks to you in rebuttal when I'm
17 done. In support of the government's case, they basically
18 allege three things that I mentioned in my opening. That,
19 number one, Marjorie killed Jim Roden to silence him about
20 going to the police concerning the Wells plot.

21 Number two, that she knowingly gave timers to
22 William Rothstein that were to be used in a totally customized,
23 improvised explosive device, that was being built by someone, a
24 trusted friend for 30 years, that had never done anything
25 seriously wrong in his life -- at least to that point.

1 And also the third thing, is that Marjorie acted as
2 a lookout. As I think I stated in my opening, that it's
3 alleged she drove around with Ken Barnes on upper Peach Street
4 that day.

5 Well, there's a couple problems right off the bat
6 with that. In the government's initial opening to you, just
7 prior to the lunch break, they made it seem like Marjorie's
8 properties, although she owned them, were rundown shacks. I
9 would agree that they were messy inside and she's basically a
10 horder, but it still doesn't change the fact that Bill
11 Rothstein had \$78,000 of her money in cold hard cash at his
12 house. It doesn't change the fact that she owned Carter Beach
13 outright. She owned the Bacon Street property outright. And
14 she owned the property in Ripley outright. Even taking the
15 nominal value of those, it's still significant means.

16 You can tell by the people she hung around with,
17 that she didn't necessarily spend a lot of money, either. She
18 just didn't have a lot of bills in her life.

19 You heard that in the late '90s she settled a
20 medical malpractice lawsuit that gave her hundreds of thousands
21 of dollars.

22 You also heard that when her mother died in 2000,
23 which hurt her a lot and changed her life, which this dispute
24 with her dad began with the genesis of this, when her dad
25 flaunted all this money that he had taken and then had given it

1 away to his neighbor. Marjorie, through the legal system,
2 challenged that, and eventually negotiated a settlement. She
3 got a large CD from her mom and she got a settlement from her
4 dad. And all that happened in the late '90s to 2000. And yet
5 she needed to rob a bank to get money to pay Ken Barnes to kill
6 her dad.

7 There is a constant theme throughout this case,
8 ladies and gentlemen, and that is Bill Rothstein and his
9 ability to manipulate people. His ability to categorize
10 people, and his ability to insulate people.

11 We learned about Bill Rothstein's initial attempt at
12 manipulation from Ron Levey. Now, remember Ron Levey came in
13 during our case. He wasn't necessarily well-kept, couldn't
14 necessarily communicate real well, but he was okay upstairs.
15 And what did he say. Bill was a friend, I mowed his grass.
16 At some point in time he told me to stop hanging around him,
17 someone else would mow the grass.

18 What did Ron Levey also say. He said that Bill
19 Rothstein approached him for timers. For metal screens. For
20 tubing. And for belt lubricant. Well, the government wants
21 you to believe that one of the overt acts that my client did
22 was provide timers to William Rothstein, like it was
23 predetermined. But the fact of the matter is Bill Rothstein is
24 a planner, ladies and gentlemen. He's a deliberator, he
25 thinks. And he thought Ron Levey, he's a friend, he'll trust

1 me. He just so happens to live above a hardware store that has
2 what I referred to as dead inventory. It's filled with pieces
3 of metal, pieces of wire, pieces of bolts. There is no
4 inventory control system there. If he could get all his
5 supplies there, great, how would anyone ever track that. You
6 heard Dr. Yeager. That pieces of the bomb were made up of such
7 ordinary materials that it was impossible to try to determine
8 where the materials were bought.

9 Well, Ron Levey told you. From our case in chief,
10 Ron Levey said I would have given him those things if I could.
11 He wouldn't have thought anything of it. But Ron Levey didn't
12 have those parts available. He referred him to someplace he
13 thought would have them.

14 So it wasn't predetermined that Marjorie
15 Diehl-Armstrong would confide in Bill Rothstein and say here,
16 Bill, here's the timers you need for your bomb. It just didn't
17 happen. Bill Rothstein went out and thought also one thing
18 about Ron Levey. If it's between me and Ron Levey and where I
19 got these timers, do you think people are more likely to
20 believe the person who's smart, who's intelligent, who was a
21 substitute teacher, who is a licensed electrician. And how
22 hard would it be for the government to prosecute him with a
23 witness like Ron Levey. That's clearly Bill Rothstein
24 manipulates or at least attempts. Ron Levey wouldn't have
25 thought anything of providing him those timers.

1 So why would any other friend -- someone says an
2 ordinary kitchen timer, hey can I borrow that. There's not
3 even any evidence of that. It's just that she provided these
4 timers. So was it a friend at her house. Was Bill Rothstein
5 as her house. Maybe. He was cleaning up after the body, he
6 was there by himself, when Marjorie is living in the car.

7 Bill Rothstein's ability to manipulate extends
8 further. Ron Levey's vulnerable. He's a vulnerable person,
9 he's trusting, he's not going to look for evil in people. But
10 let's look back and see where else Bill Rothstein tried to
11 manipulate people. Not even try, it's that he did.

12 How about when Trooper Morgan was on the stand, we
13 had when these 911 calls were placed. We had a transcript to
14 follow along with him, I believe. There's a dead body in my
15 freezer, and I'm paraphrasing, there's a dead body in the
16 freezer. Who is it, sir. I don't know. The suicide note
17 you're going to get a look when you're back there deliberating,
18 identifies who the body is. Bill Rothstein was already setting
19 up the information that Trooper Morgan, who he knew, who he was
20 familiar with, would know right from the initial get-go within
21 the first couple lines of that first 911 call. He knew whose
22 body it was in the freezer the whole time. But he knew,
23 because he's a thinker, he's a planner and he's deliberate.
24 When he decides to do the 911 call, he just didn't necessarily
25 have at the time to do as thorough of a job.

1 So that's the first attempt to manipulate. That is
2 to manipulate law enforcement, the Pennsylvania State Police
3 and one he was familiar with. Bill Rothstein just doesn't
4 leave it there, ladies and gentlemen. He goes further with his
5 manipulation. Not only does he successfully then get Marjorie
6 Diehl-Armstrong put in jail, there is a dead body in his
7 freezer, no one is going to refute that, and he claims that
8 Marjorie shot him. Bill Rothstein says and I've been fixing up
9 the place -- he's in complete control. It was his grand stage.
10 The teacher, the professor, is giving his greatest seminar
11 ever. He has experienced Erie City PD, police detectives from
12 the City of Erie hanging on his every word. He has state
13 police hanging on his every word. He has Evidence Response
14 Teams from the state police, from the ATF, from the FBI,
15 hanging on his every word.

16 Remember the way he was speaking, ladies and
17 gentlemen. Any questions. Anything. He was saying a lot of
18 may haves, could haves, I don't know how that got in here. I
19 don't know what Marjorie did. He's a thinker, he's a planner,
20 he was enjoying the limelight. He was enjoying the stage. So
21 much so, his thinking and his deliberation and his planning,
22 whenever they walked into the bedroom, where my client shot Jim
23 Roden, I think it's the Erie PD, he's holding a tablet,
24 remember, he's sketching out diagrams. What did Bill Rothstein
25 do. Well, you know if you're asking questions about that, give

1 me that pen here. Do you mind if I draw. Well, what was he
2 saying before that. Can I touch this, is this okay. Come on,
3 ladies and gentlemen, he's manipulating the police, the ATF,
4 the FBI, and loving every minute of it, and all of those guys,
5 God bless them, they were soaking it all up. They were loving
6 it. Because you know what, the case is getting stronger and
7 stronger against Marjorie Diehl-Armstrong for the homicide of
8 Jim Roden.

9 So let's get back to when they fill out that tablet,
10 what does he do. He has the police officer offer him a pen.
11 Bill grabs his own pen out of his bibs that were made so famous
12 from this case and says I'll use my pen, it has a different
13 ink. The police weren't even thinking about well, let's screw
14 up my diagram, I'm not going to be able to tell anyone what I
15 wrote and what Bill wrote. Here's my pen. Bill knew. Bill
16 was smart. He could see that. And he says no, no, I'll use my
17 pen, then you can tell it's me that's writing this stuff. Best
18 lesson in the world. Just has these police, knows he's going
19 to catch a deal, has them in the palms of his hands. All the
20 while, maybe it's to redirect attention, I don't know, he never
21 says.

22 What you're going to see throughout this case is
23 what I believe, what I submit to you what the evidence will
24 show in this case, in that the evidence that the prosecution
25 brought forward is just rampant with these instances of Bill

1 Rothstein controlling people, manipulating them, and it's like
2 it never happened because it doesn't fit into the government's
3 theory.

4 Now, you heard from some of the government's
5 witnesses that the plan was Brian Wells robs the bank. And the
6 plan is to hand it off to William Rothstein. And the plan is
7 he hands it off to this guy named Floyd Stockton. That's what
8 was supposed to happen. And you will read the notes, they made
9 a big deal about notes, about the little scribbles that are on
10 the bottom that are fake, that are real. In the government's
11 opening so many days ago, they said that the notes were a ruse.
12 Well, if the notes were a ruse, ladies and gentlemen, why when
13 they tried to follow them, it ended up being a disturbed site,
14 as if somebody was there and something was taken.

15 The government doesn't know, ladies and gentlemen,
16 if that site was the last site. They don't know whether that
17 site had the key where Brian Wells, all he had to do was to
18 turn the lock, boom, it's off. The government doesn't know
19 whether Brian Wells had the knowledge to pull that second
20 cotter pin, give himself plenty of time, 55 more minutes, Dr.
21 Yeager said or somewhere thereabouts. The government doesn't
22 know those things. That's part of the manipulation of Bill
23 Rothstein, because he's dead, we don't know. Because we don't
24 know what the builder of the device told the wearer of the
25 device, during that so-called planning meeting on the 27th. We

1 just don't know those things.

2 If you also look closely of the people that Bill
3 Rothstein kept around him for this plan, they're all
4 vulnerable. He tried to bring on Ron Levey. Brian Wells was
5 vulnerable. Kenny Barnes vulnerable. Marjorie Diehl-Armstrong
6 vulnerable. She's mentally ill, she told you she's diagnosed
7 with bipolar. She told you that she has paranoid personality
8 disorder. She said that she had narcissistic, and the
9 government agrees she has grandiose tendencies.

10 I'm not asking you to like Marjorie Diehl-Armstrong
11 as she sits there, making these remarks and saying things about
12 different witnesses and about the prosecution and the agents.
13 Your job is not to like her, your job is not to invite her over
14 for dinner or have a birthday party for her. Your job is to
15 understand that once you are a collective jury and you go back
16 there to decide the facts, to know that that oath you swore
17 first starts out with the presumption of innocence. And
18 through the government's story, have they proved to you beyond
19 a reasonable doubt each and every element of each and every
20 crime with which my client was charged. And I would submit to
21 you, no, they haven't. Have they proved a conspiracy exists.
22 Yeah, maybe. But did they prove that Marjorie was member of
23 that agreement.

24 Well, let's go with the government's theory that the
25 notes were all just a ruse, just a distraction, some of them

1 are true and some of them are not true. If that's true, the
2 notes also say there are people looking at you to make sure you
3 meet your goals, your mileposts. Quite honestly, did they
4 really look at this plan. They're simple rules, as I mentioned
5 earlier. Brian Wells robbed the bank. Bill Rothstein gets the
6 first hand off. Floyd Stockton gets the second hand off. It's
7 more like a relay, different vehicles involved, who knows what
8 witnesses are going to see. But to get that money as far away
9 from the bank as quickly as possible, in as many different
10 types of vehicles. Similar, don't you think, to cut it all up
11 into little pieces, spread it over as large an area as
12 possible. The smallest pieces you can do, over as wide an area
13 as possible. He's a planner. He's deliberate. He thinks
14 about these things. That's what Bill Rothstein does. He likes
15 to account for any sort of contingency that could happen. And
16 that's what Bill Rothstein did here.

17 What was his motive. You heard several different
18 motives. Bill Rothstein needed money to stay in his homestead
19 where he grew up and lived forever. Another motive, I guess,
20 poor Brian Wells payoff of a drug debt. As a little aside to
21 that, Jessica Hoopsick, the person that maybe knew him best or
22 the only real person that knew him, testified on this witness
23 stand, Brian Wells never did any drugs. But through government
24 witnesses they say I heard that he had to pay off a drug debt.
25 And the other motive is for Marjorie to get money, to pay Ken

1 Barnes, so that Ken Barnes could kill her dad.

2 August of 2003. Let's talk about that last one a
3 little bit, this has been thrown throughout here. It's clear
4 that Marjorie doesn't like her dad. It's clear she hasn't
5 liked her dad for a real long time. But you know what the only
6 child does, nothing. We make no excuses for not liking her
7 dad, she has issues. But if her plan is to kill her dad and
8 get Ken Barnes to do it, why in May of '03, when she is the
9 victim of a violent home invasion, where someone falls on top
10 of her, threatens her life with a knife to her heart, whereupon
11 he takes off with the money, the amount, who cares, someone
12 just broke into your home, threatened your life and ran off
13 with the money. I would submit that the evidence shows that
14 the \$2,300, \$2,400, yeah, it affected law enforcement. What
15 affected law enforcement more is when Marjorie, being herself,
16 you saw the way she gets mad and angry and impulsive, that's
17 the way she dealt with the police. She had just been through
18 an emotional trauma, a physical trauma, she ran across to the
19 neighbors, fell and got hurt. Banged on the door. The police
20 came immediately. Violent home invasion. You know what the
21 place did -- that lady is nasty. It's 4 o'clock in the
22 morning, she's nasty. Man, she even suspects who did it. Man,
23 she's nasty. We'll get around to it. That frustrated her.

24 You got someone with paranoid personality disorder.
25 You know the old joke, just because you're paranoid, it doesn't

1 mean people are watching you or following you. Well, the
2 police couldn't act fast enough. There is evidence that she
3 called the police twice that night or that early morning.

4 The reason the amount changes, if you believe it
5 did, her grandiose tendencies. You remember the first day of
6 her testimony on that stand, I was saying to her was that a
7 good restaurant or bad restaurant. It was the best. Was that
8 a good school or a bad school. It's the best. Is that ring
9 that guy gave you a cheap ring or an expensive ring. It's
10 perfect. It's because that's who she is. That's what you get
11 when you talk to Marjorie Diehl-Armstrong. That's narcissism,
12 that's grandiose sense of self. I'm the first one to finish
13 college in three years, get that degree. What kind of cook are
14 you, Marge. Gourmet. Can't even make a grilled cheese
15 sandwich, it's got to be a gourmet. That just who she is. And
16 Larry D'Ambrosio said it the best. With all those faults,
17 believe me there are many we'll get to, but what did Larry
18 D'Ambrosio say. Well, you just got to kind of forgive her for
19 her behavior, that's connected to her mental illness. You just
20 got to forgive it. Because in one instance she could be
21 calling you a litany, a litany of adjectives that are not very
22 complimentary, and then in the next second, hey, would you put
23 a little money in my books. There's just no connection.

24 And so Larry said it best. You just got to forgive
25 her for that, that's what you get when you're close or your

1 friends or an acquaintance with Marjorie Diehl-Armstrong.
2 It's grandiose of self, narcissism. It just doesn't follow
3 that someone with that type of personality would have the
4 ability to be a planner, to deliberate. Over a long period of
5 time. You heard Dr. Yeager. Dr. Yeager, would it take a long
6 time to do. I would imagine it could have taken some time.
7 Well, do you need to test everything. I would think you would
8 want to test everything. It just doesn't make sense for there
9 to be testimony that there is this need -- whereupon my client
10 is saying let's rob a bank. Jim, you're the getaway driver.
11 Well, let's just think about that. Let's say that's
12 what the agreement is. Jim's the getaway driver. Well,
13 everyone knows that Marjorie and Jim are tied at the hip, they
14 live together. So even if the bank robbery and Brian Wells had
15 been driven around to all these spots by Jim and they get
16 caught, so Brian Wells is wearing the device and Jim Roden is
17 just the driver there. Well, Jim Roden, where do you live. I
18 live down the street with Marjorie Diehl-Armstrong. Is that
19 planning. Is that deliberate. Is that trying to insulate
20 yourself for not being able to get caught or traced. Is that
21 creating many hand-offs so the money can get as far away as
22 possible, as quickly as possible, in as many different vehicles
23 as possible. No. That is leading the police right to the
24 front door of a house that is just filled with junk. But has
25 two apartments that are legal, so they can continue to get

1 assistance -- you don't have to like her for that, either. But
2 you know what, that's what the rules allow. Medical
3 malpractice is income tax free. Marjorie told you she used to
4 be a welfare worker. No one says she's stupid. She's smart,
5 you know she's smart. At least, I would submit to you, that's
6 what the evidence shows. She read the rules. She reads the
7 law. And she also gets some advice from someone -- you both
8 can't live there, you got to put a show on anyway, even if it's
9 not true, put the show on, get new appliances up there, get
10 separate doors, get separate baths. She's following the law.

11 The government wants to say that Marge is not a lone
12 wolf. You know she can't build things. If you believe Ken
13 Barnes, Ken Barnes said he was going to get paid one sum of
14 money and he got like 150 bucks. But he knew who he was
15 dealing with. He was dealing with Marjorie Diehl-Armstrong.
16 Someone at times can be nasty. You heard Ken Barnes say that
17 she and Jim Roden fought like cats and dogs at times.

18 So I'd like to talk to you a little bit about that
19 first category, the death of Jim Roden. Part of the
20 government's theory of the case, that I would submit to you as
21 they presented it to you in their case in chief, would say that
22 there's this meeting at this house. The meeting at the house
23 is to discuss plans for a bank robbery that involves a getaway
24 driver. Ken, will you do it. Jim, will you do it. Apparently
25 they say no. Well, if there's a getaway driver with a collar

1 bomb on someone else -- that you just created, one guy dies,
2 then you got a driver, well, let's go there. You heard Agent
3 Clark testify, what did you do. Well, when Brian Wells died,
4 the only lead we had was to go to Brian Wells's house. That's
5 where we found notes, gave us the phone numbers of Jessica
6 Hoopsick and many others. But Jessica Hoopsick was one, you
7 heard that. That's what they do, right. That's what they
8 have. So Jim Roden's the driver. Or Ken Barnes, you're the
9 driver, where does that lead you, right to Ken Barnes's house.
10 Well, who do you guys hang around with, Aggie Owen. What else
11 do you do. Well, we go fishing with Jim Roden and Marjorie
12 Diehl-Armstrong. Is that planning, is that deliberation. And,
13 again, is spreading things out in such small pieces over such a
14 wide area, that law enforcement is never going to be able to
15 find them. I would submit to you no, ladies and gentlemen,
16 it's not. I think it's consistent with what Bill Rothstein
17 liked to do, what Bill Rothstein likes to be a part of.

18 Now, my client did testify. And she testified about
19 that robbery at the end of May of 2003. We had Captain
20 Kwitowski say yeah, it was a real robbery, we took photographs,
21 we took fingerprints, we weren't able to develop anything. The
22 dollar amounts changed. I don't fault law enforcement
23 necessarily, you like your victims to be able to ID the person,
24 to be able to be concrete with the amount of money. She
25 couldn't. But she started yelling at them. Well, that may

1 change the police officer's view and maybe with good reason.
2 But because they weren't doing anything, what did Marjorie do.
3 Marjorie, again, what's the law. You know, I can file a
4 private criminal complaint. What does she say in that private
5 criminal complaint. The same thing, ladies and gentlemen, that
6 she told the police. And I'm worried. Here is all what
7 happened, here is who I think did it. Please accept this
8 private criminal complaint. And oh, by the way, law
9 enforcement, the mayor, the district justice, I'm worried about
10 the safety of my dad.

11 So in May of '03, after being a victim of this
12 violent home invasion robbery, they want to say it's just a
13 burglary, it is a robbery when someone puts a knife to your
14 chest. Hey law enforcement, I'm worried about the safety of my
15 dad. Ken Barnes wants to kill him. What would we have to gain
16 from that. Well, that wouldn't be the only part of that
17 conversation that Ken Barnes, you know, the drug dealing, the
18 whore house running, the guy that found God, I got three hots
19 and a cot, I'm good, I don't need to get out of jail. Ken, did
20 you waive your right to get a sentence reduction. Well, they
21 haven't promised me that, that's not automatic. As much as I
22 can agree it's not automatic, the agreement says may. That is
23 discretionary language. But he found God, Ken Barnes did.

24 I would submit to you that conversation went more
25 like well, geez, Marge, your dad has all that money, why don't

1 I kill him and you give me a cut. You know he likes to make
2 money. I was never going to kill Marge's dad, I was just going
3 to get that down payment and run up to Buffalo and buy a lot of
4 crack and get rich. That is what he told you from the witness
5 stand under oath. Because he found God.

6 But in September of '03, when he was interviewed on
7 video by the Erie Police Department, and thank God they
8 videotape their interviews, because you know what lawyers can't
9 do and what the agents can't do, is choose verbs,
10 mischaracterize what that person says. Because you all do is
11 hit play.

12 What did Ken Barnes say about the money then. Oh,
13 yeah, she said for years she wanted to kill her dad. In
14 September of '03. Marge already told law enforcement in May of
15 '03, I'm worried about Ken Barnes killing my dad. In addition,
16 I think he's part of the people that robbed me, which he told
17 you from that stand he was. Isn't that funny. Marge is
18 actually right. She's right. She knew who robbed her, she
19 wanted the police to go do something and they didn't. That
20 frustrated her. You saw how that frustration comes out with
21 her. Banging down, expletives flying. That's what you get
22 with Marjorie Diehl-Armstrong.

23 Again, I didn't ask you to like her. I'm asking you
24 to forgive it and look at her like she's a person. Don't give
25 her sympathy, that's not what I'm asking you for. Because she

1 killed a guy, no doubt about it, she's serving up to 20 years
2 for it.

3 But getting back to Ken Barnes. What did he tell
4 you in that video about money. Probably you all remember that.
5 I would have taken that down payment and run right down here to
6 the police and given it to you. Come on. He needed to protect
7 his house of prostitution and his crack dealing, is what he
8 needed to do in September of '03. He wasn't interested in
9 telling the police any truths. So if they talked to him about
10 well, has she ever said anything about killing her dad, oh,
11 yes. Well, of course, it was her that was saying that, it
12 wasn't me. She was propositioning me to kill her dad. That's
13 the way that went. And I would have given you that 100 grand,
14 too, officer, detective. Why. Who knows why. Back then he
15 didn't find God. He didn't find God until he was in federal
16 prison getting health care, now he's got diabetes.

17 How does this relate with the death of Jim Roden.
18 My client's explanation to you is the only time that any law
19 enforcement or anyone has really been involved. The government
20 would have you believe that Kelly Makela was told and everyone
21 was told. And quite honestly, the State of Pennsylvania, the
22 Erie County prosecutor, on the theory there was an argument
23 between her and Jim Roden and a gun got involved. You just saw
24 a small part of her anger and her rage. She's bipolar. She's
25 paranoid. Borderline personality disorder. She has grandiose

1 tendencies. She's narcissistic. What do you think that person
2 does when someone says hey, Marge, and it is reasonable for Mr.
3 Roden to have done, Marge, I'm done. The cops aren't doing
4 anything, I'm not doing anything. I'm done. You don't say
5 that to Marge. There's going to be a fight, there's going to
6 be an argument. Because you do what she says to do. Jim Roden
7 didn't. Ken Barnes again says, Ken Barnes knew her. He said
8 they fought like cats and dogs, PFAs. Jim Roden spent time in
9 jail. He hurt her real bad and cut her. Jim Roden said no,
10 I'm don't care anymore, you're crazy, you're nuts. And my
11 client shot him. Was it deliberate. What it was, two shots
12 with a shotgun blast, the government has that right, you'll see
13 in the autopsy, you can read it for yourself, Jim Roden dead.

14 Let's look at some of the other government witnesses
15 about this very incident. Gloria Bishop. Here in 2010 and at
16 a preliminary hearing in early 2004. Marge told me when it
17 happened, Marge wasn't really ready to talk about it. When it
18 happened, she panicked. If the murder of Jim Roden or as my
19 client likes to say the shooting death, it doesn't matter, she
20 killed him with a shotgun, she pled to the shooting, to third
21 degree but mentally ill. So does it sound like it was
22 something that was planned, that was deliberate. You don't
23 have to look any further than their own relationship. They're
24 joined at the hip, they went everywhere together. They went
25 fishing together. If Bill Rothstein was involved in this

1 shooting death, this murder of Jim Roden, the gentleman that
2 likes to cut things up into small pieces and spread them around
3 as wide an area as possible. Would he have done it in a spot,
4 in the location where now he's got to get a body out of the
5 house, he's got to get the blood off the walls, he's got to get
6 the blood off the floor, he got to get the mattress out. He's
7 got to do something with the shotgun. That was just bought
8 from a tax paying citizen that came in here that had nothing to
9 gain or lose from this. It doesn't sound planned to me. It
10 doesn't sound deliberate. It doesn't sound like the actions of
11 Bill Rothstein.

12 The government might say in rebuttal that's because
13 Marjorie shot and killed him. Well, what do you get when you
14 get Marjorie. You get you do what I do, if you don't, you're
15 against me. That's what Jim Roden did, he was shot and killed.

16 What I would submit to you the evidence really
17 shows, is all those notes and all that scavenger hunt that
18 Brian Wells was sent on, didn't need a lookout, didn't need a
19 century, all that was just a ruse, just like the government
20 says the notes are, they're just a ruse. But on August 10th of
21 2003, when the government claims there was a bank robbery
22 conspiracy involving a getaway driver with Jim Roden as the
23 getaway driver, now all of a sudden they don't have that.
24 Well, we know earlier from when I spoke to you about, and what
25 you'll get a chance to observe, the hostage note doesn't say

1 hostage and driver please go to these locations. And the
2 testimony of Agent Clark said, basically, it wouldn't have made
3 a lot of sense to have a driver in a hostage sort of type of
4 coercion defense for Brian Wells, it just doesn't make a lot of
5 sense.

6 But on August 9th or 10th, when Marjorie shoots Jim
7 Roden, Bill Rothstein gets a phone call. The planner, the
8 person that deliberates, the person who likes to think things
9 out. Now, all of a sudden while he's working on this business
10 protect, which by the way was referred to by my client in the
11 interviews with the FBI and Ron Levey -- Bill, he wasn't
12 around, he's saying he's working on a business project. When
13 the witnesses are disconnected -- they mentioned the same type
14 of word, business project. That lends credibility to it
15 because that could be corroborated. The planner, Bill
16 Rothstein, for whatever his motives, couldn't say no to
17 Marjorie Diehl-Armstrong. Now, all of a sudden he had
18 something else to worry about. What the heck am I going to do
19 with this body while I'm trying to do this bank robbery. Well,
20 part of the government's theory, they had to then get the bomb
21 because they just lost the getaway driver. Well, it's only
22 August 10th to August 28th. Eighteen days to build, design and
23 test the bomb, get the timers. Ron Levey said he was asked
24 about the timers long before that.

25 I would submit to you that the evidence from Dr.

1 Yeager and what you saw on the slide show, would be the type of
2 bomb that takes longer than 18 days to actually make. To do a
3 bank robbery conspiracy, just lose the getaway driver, we know
4 it wasn't Ken Barnes, he found God, he wouldn't be a getaway
5 driver. We know he's a co-conspirator to a violent home
6 invasion. Where he knows he can get a guaranteed score from
7 his good friend, Marjorie Diehl-Armstrong, who's a little nuts
8 and a little nasty, carries large amounts of cash. But he
9 wouldn't steal it from a bank, well, at least not through a
10 bomb. He steals by pen. Well, there were a lot of notes in
11 here, ladies and gentlemen, there were a lot of notes in this
12 case.

13 Again, my client's reason for killing Jim Roden, it
14 isn't sufficient, it's irrational and it doesn't make a lot of
15 sense to normal people. But normal is not what Marjorie
16 Diehl-Armstrong is. It's not what you get. You only have to
17 look as far as the tow truck driver, Mr. Ickiewicz. I'm there
18 to help this lady and she comes out just, you know, she's
19 barreling at him, letting him have it. So much so he said
20 look, lady, I'm leaving if you continue this. I'm not asking
21 for you to make sense. I'm not asking you to have a birthday
22 party for her. I'm asking you to look at the type of murder,
23 the type of shooting that happened. And if it was done
24 consistent with the conspiracy theory of the government, it
25 would have been well planned, it would have been well thought

1 out, there would have been a plan for the body disposal. It
2 wouldn't have been laying in a garage and it wouldn't have
3 ended up in a freezer. Bill Rothstein would have planned it.
4 I would submit to you that's the type of planning that Bill
5 Rothstein liked to do. Marjorie could have taken Jim Roden
6 anywhere, could have lured him anywhere and shot and killed
7 Jim, if it was part of the bank robbery conspiracy.

8 And I would also submit to you what else doesn't
9 make sense. We put forward to you that Marjorie, in May of
10 '03, goes through this violent robbery, the police don't do
11 anything, she's frustrated, she's frustrated with Jim, she's
12 scared to be in her house, she buys a shotgun for protection.
13 She goes to the newspaper, circles them, just like you might
14 see on TV, presumably makes more than one phone call. Finds
15 one, whether the guy will sell it to her. She travels out
16 right away. Doesn't negotiate price or anything. Here you go,
17 here's the money.

18 If Bill Rothstein did it, and they're hanging around
19 guys like Ken Barnes, who is dealing drugs and I guess
20 promoting prostitution, why can't they just get a stolen gun on
21 the street, a gun they can't trace. Or why don't they just use
22 the gun Bill Rothstein has had for years. So that there isn't
23 that other witness out there. Let alone some punk-ass kid from
24 the city who is selling stolen guns, who maybe gets busted and
25 needs a deal, so he tells the police, you know, I sold a stolen

1 gun to this person. No, it's not even that. That's not even
2 as good as just using something you already have. But he sends
3 Marge, of all people out. Hey, go create a totally credible
4 witness that you need to buy a shotgun, and then go kill Jim
5 Roden with it. In the most unplanned way. While I've been
6 building, designing and testing this bomb and this relay system
7 for the money.

8 It just doesn't make sense, ladies and gentlemen.
9 That's the facts that the government has put forward. And part
10 of the problem with every prosecution is, there are some facts
11 that don't fit. And they usually just slide those facts aside
12 and just don't hit them, that's my job. And, again, it's not
13 beyond all reasonable doubt, as I mentioned before, it's not to
14 a mathematical certainty, but it's just a hesitation in one of
15 life's important decisions. And it's just having more
16 questions and not having faith in the answers that you're given
17 or not given.

18 And I would say as it concerns the shooting death of
19 Jim Roden, you have to look no further about the amount of work
20 that Bill Rothstein had to do, replacing those treads in the
21 stairs. If all these people are conspiring together, why can't
22 they just carry the body out. Why don't they just get a
23 freezer and put it in the basement of the house. I mean, then
24 the neighbors can't see you taking a body out of the house.
25 Why doesn't \$78,000 of cold hard cash have to go to the guy